

Town of Weare
ZONING BOARD OF ADJUSTMENT
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**ZONING BOARD OF ADJUSTMENT
MINUTES
July 6, 2010
FINAL COPY**

PRESENT: Jack Dearborn, Chairman; David W. Ruoff, Vice Chairman; Forrest Esenwine, Member; Neal Kurk, Alternate; Malcolm Wright, Alternate; Ian McSweeney; Chip Meany, Code Enforcement Officer; Sheila Savaria, Minute Taker

GUESTS: Mark & Wendy Donnelly, Rodman Wilson, Shawn Hawkes, Ginger Esenwine

I. INTRODUCTION:

Chairman Dearborn called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Dearborn explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items to take up at this time. Chairman Dearborn appointed Neal Kurk, Ian McSweeney, David Ruoff, and Forrest Esenwine, and himself as voting members for the meeting.

III. PUBLIC HEARINGS:

Case #0610 Roger Hardy Construction LLC
Special Exception to Article 29-10
The applicant wants to build a 5 unit industrial building in an aquifer
Tax Map 412-170 South side of Colby Road

The Board accepted a signed authorization from Roger Hardy to allow Art Siciliano to represent him at the July 6 meeting.

Chairman Jack Dearborn discussed a document explaining uses. The document is a specification by the state which provides certain categories and classification of all uses within the state.

Forrest Esenwine pointed out that the application is not complete because it is missing its cover page that states whose application it is. He does not feel the Board should hear and incomplete, defective application.

Vice Chairman David Ruoff motioned to accept the application, Ian McSweeney seconded. Discussion: Mr. Ruoff was able to read through and figure out whose application it was. Mr. Esenwine feels the document should be complete. Four members voted in favor of accepting the application, Forrest Esenwine was opposed.

Art Siciliano, representing Roger Hardy, presented his case. The lot is 10.12 acres on a long, narrow lot. It is not in a flood zone, it is in an aquifer protection area. The proposal is for a 5-unit industrial building with 20 parking spaces.

Chairman Dearborn questioned the size of the old town dump represented on Mr. Siciliano's drawing. He explained that his issue is that they are not sure what is in the soil. Is the property suitable as an industrial use in an aquifer? He asked Mr. Siciliano what he has done to demonstrate to the Board that this property is appropriate. Mr. Siciliano said testing has been done to determine the boundaries of old town dump. Forrest commented that there had been testing done, but Mr. Siciliano said it doesn't reflect that on the plan, or a printout. Neal Kurk says that if the potential use will pose a risk to the occupants or the aquifer, then we need to evaluate that risk. Chairman Dearborn posed the question to the Board: Should we be sanctioning building on suspect sites, and if so, we need to take the appropriate measures to validate the pedigree of it and whether it is or isn't, to a reasonable degree. He feels before the Board goes any further, it should be certified as okay by the EPA.

Chairman Dearborn feels a qualified individual should go onto the site and figure out what is under ground and on the ground to get the baseline established for the property. Chairman Dearborn feels the Board should hire someone to specify reasonable test pits, water quality, etc. Chip Meany recommended sending out a scope of work out to a select group of engineering firms so they can bid on the work to determine the cost. Chairman Dearborn says they should determine cost, then Mr. Siciliano can bring it to his client, Roger Hardy, to see if they want to fund it.

Chairman Dearborn motioned to continue case #0610 until the August 3 meeting; Ian McSweeney seconded, all voted in favor.

Case #0710 Shawn & Denise Hawkes
 Variance to Article 18-2.1
 The applicant is requesting waiving the 50' right of way
 requirement for access and reduce the requirement to 20 feet.
 Tax map 408-184 North side of Gen. Knox Rd. &
 East side of Brown Ridge Rd.

Vice Chairman Ruoff moved to accept application for case #0710 as complete; Ian McSweeney seconded; four members voted in favor, Forrest Esenwine was opposed.

Art Siciliano, representing the Hawkes, presented his case. The Hawkes are requesting permission to subdivide his current lot of 147 acres with frontage on Brown Ridge Road. There is a 20' right of way, but no frontage on Knox Road. He is asking that the Board reduce the 50' requirement to 20'. Chairman Dearborn said that the 20' he has now is a deeded right of way, but technically he does not own 20' of frontage. He feels Mr. Hawkes is actually asking for a variance for having 0' of frontage on a class 5 road for that lot. There is a 20' deeded right of way, which is different then saying 20' deeded property. The applicant is actually trying to relax all frontage to 0 feet, and use a deeded right of way. How can the Board grant a variance on a right of way? He feels the application status should be for a subdivided lot with 0 frontage, not 20 feet.

Mr. Kurk discussed the issue of hardship. All of the conditions that created the problem are conditions of the applicants own making by building the house on that location and collecting the property around it. Mr. Kurk also questioned if the Board should contact Bill Drescher to see if they have the authority to grant this special exception.

Neal Kurk motioned to continue hearing the case tonight, Ian McSweeney seconded. Discussion Neal Kurk is concerned that if the Board grants this, they would be exceeding their legal authority. He would like to consult with Bill Drescher to ascertain they have the power to go to 0' frontage, and if this qualifies as a hardship since the applicant created the hardship himself? Four members voted in favor, Forrest Esenwine was opposed.

Mr. Siciliano read aloud the 5 points of hardship from his application. There was discussion on whether or not it was actually a hardship.

There were no abutters, members of the public, or other boards who wished to comment.

Neal Kurk moved to continue this case in order to get an opinion from legal council as to whether the board has the authority to zero out a frontage requirement, and as to whether a variance can be granted on hardship grounds if the hardship was created by the applicant. The motion was defeated due to lack of second.

Chairman Dearborn announced that the public hearings were finished at 9:55 PM.

Forrest Esenwine moved to accept point 1 on the application; Ian McSweeney seconded, all voted in favor.

Forrest Esenwine moved to accept point 2, Ian McSweeney seconded. Discussion: Neal feels you cannot seek relief for a variance if you've created the reason you need relief. He feels they are exceeding their legal authority. Vice Chairman Ruoff doesn't feel the applicant had control over what ordinances were in affect when the original lot was deeded to him, or what the Planning Board required him to do to access these lots. Chairman Dearborn feels this is a reasonable use of the property. Four members voted in favor, Neal Kurk was opposed.

Forrest Esenwine moved to accept point 3 on the application; Ian McSweeney seconded, all voted in favor.
Forrest Esenwine moved to accept point 4 on the application; Ian McSweeney seconded, all voted in favor.

Forrest Esenwine moved to accept point 5 on the application subject to the following conditions: there is 0' frontage required on the proposed 20.4 acre portion of lot 184, on which an existing house sits, and no further subdivision of that property is allowed; Ian McSweeney seconded. Discussion: There was discussion on how to word the conditions in the motion. Four members voted in favor, Neal Kurk was opposed.

IV. OTHER BUSINESS:

Thomas A. Wilson, 71 Blake Road, Tax Map 403-101. Mr. Wilson requested the variance on (lot 57, Blake Road), be extended for another year.

Forrest Esenwine moved to grant the variance; Vice Chairman Ruoff seconded, all voted in favor.

Minutes Forrest Esenwine moved to accept the minutes of May 4, 2010 meeting as distributed; Vice Chairman Ruoff seconded, all voted in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 10:07 PM; David Ruoff seconded the motion, all in favor.

Respectfully submitted,

Sheila R. Savaria,
Recording Secretary